RECENT IMPORTANT DECISIONS.

APPEARANCE—APPEAL FROM ACTION IN REM AS GENERAL APPEARANCE.—Application by plaintiff for a writ of mandamus to compel the defendant district judge to reinstate and proceed with the case stated below. The plaintiff had commenced suit by attachment in a justice court against a non-resident defendant. The only service was by publication of summons. Judgment was rendered against the defendant by default, and his property seized under the attachment was sold. Subsequently the defendant appeared specially and moved to have the judgment vacated for want of jurisdiction of the person. The defendant's motion was denied and he took a general appeal to the district court. The district court having erroneously discharged the attachment, dismissed the case for want of jurisdiction of the defendant's person. The statute provided that "all cases appealed to the district court shall be heard anew in said court." *Held,* the appeal constituted a general appearance, and mandamus should issue. *H. L. Griffin Co.* v. *Howell, Judge* (1911), — Utah —, 113 Pac. 326.

The decision in the principal case follows the general rule on this subject, *McCubrey* v. *Lankis,* 74 Minn. 302. When, as in the principal case, a general appeal is taken from a justice court judgment, the cause will ordinarily be tried anew upon its merits, *Gant* v. *Chi., etc. R. R. Co.,* 79 Mo. 502. Thus it becomes immaterial whether the court appealed from had jurisdiction of the person or not, *Foster* v. *Borne, et al.,* 63 Ohio St. 169. Also, an appeal to a court of review from a judgment void for want of jurisdiction over the person constitutes a general appearance, *Chesapeake etc. R. R. Co.* v. *Heath,* 87 Ky. 651, 10 Ky. L. Rep. 646, 9 S. W. 832. The appellant will be conclusively presumed to have notice of and therefore must follow all subsequent proceedings had in the cause or suffer for his default, *Louisville & N. R. Co.* v. *Chestnut & Bro.,* 115 Ky. 43. But it has been held that such a general appeal does not constitute a waiver of any defect of jurisdiction over the person existing at the time the judgment was rendered, and that such want or defect is ground for a reversal by the reviewing court, *Zimmerman* v. *Gerdes,* 106 Wis. 608.

BANKRUPTCY—SUIT BY TRUSTEE—RIGHT TO TRIAL BY JURY.—Suit was brought by a trustee in bankruptcy to recover the value of certain goods alleged to have been fraudulently transferred by the bankrupt, the defendant in the case, as executor, to himself and his wife individually. The case was noticed for trial upon the calendar for jury trials in the Supreme Court of New York, but was transferred to the Special Term and tried without a jury. The trustee in bankruptcy made demand for a jury but it was denied on the ground that the action was one in equity. Upon appeal on this ground to the New York Court of Appeals, *held,* that the plaintiff was entitled to a trial by jury. *Allen* v. *Gray* (1911), — N. Y. —, 25 Am. B. R. 423.

Under the Bankruptcy Act of 1898 the right to trial by jury arises in but

two cases, (1) in determining the question of insolvency, (2) in determining whether an act of bankruptcy has been committed. REMINGTON, BANKRUPTCY, § 406. The constitutional right to jury trial extends only to actions at law and not to suits in equity. *In re Christensen,* 101 Fed. 243, 4 Am. B. R. 99; *In re Rude,* 101 Fed. 805, 4 Am. B. R. 319. As to whether a suit by a trustee in bankruptcy to recover property fraudulently conveyed, or its value, must be brought in equity or may be either in law or equity, there has been some difference of opinion among the courts. The question in the principal case arose under § 70 e of the Bankruptcy Act of 1898, which provides that trustees may recover property fraudulently conveyed, or its value, in certain cases. A similar question has arisen under § 60 b of the Act, relating to preferences. On the one hand a number of courts adhere to the view that suits in such cases have always been in equity and a suit in equity is the only proper remedy. *Wall* v. *Cox,* 101 Fed. 403, 4 Am. B. R. 659; *Pond* v. *N. Y. Ex. Bk.,* 124 Fed. 992, 10 Am. B. R. 343; *Parker* v. *Black,* 143 Fed. 560, 16 Am. B. R. 202. On the other hand the view seems to be that the trustee may sue either at law or in equity. *Delta Nat. Bk.* v. *Easterbrook,* 133 Fed. 521, 13 Am. B. R. 338; *Warmath* v. *O'Daniel,* 159 Fed. 87, 20 Am. B. R. 101, LOVELAND, BANKRUPTCY, Ed. 3, p. 618; REMINGTON, BANKRUPTCY, § 1725. Considering that the remedy of the trustee in such cases may be either at law or in equity the decision of the New York Court of Appeals would appear to be correct, provided the action in the case can be said to be one at law. Evidently the court so considered it. In *Cohen* v. *Small,* 120 App. Div. 211, 18 Am. B. R. 817, the court said that when the action by the trustee was to recover a money judgment the action was one at law. In *Merritt* v. *Halliday,* 107 App. Div. 596, 95 N. Y. Supp. 331, it was said that where no public record is to be reformed, no deed of conveyance to be set aside, and all that is desired is the recovery of a sum of money which constructively belongs to the trustee, the action is in form and substance an action at law. It would seem to follow from the application of these tests that the action in the principal case was one at law, and being at law the plaintiff was entitled as a matter of right to a trial by jury.

BILLS AND NOTES—DRAFT BY AGENT ON PRINCIPAL—NECESSITY OF ACCEPTANCE.—This was a suit on a draft drawn by an agent of the Insurance Company on his principal, and indorsed to the Bank. Plaintiff alleged that the draft had been presented to the defendant drawee, that a demand for payment had been made, and that payment had been refused. No acceptance by the drawee was alleged. Defendant demurred on the ground that the complaint did not state facts sufficient to constitute a cause of action. *Held,* that the rule previously obtaining has not been changed by the Neg. Ins. Law, to the effect that a draft drawn by an agent on his principal by authority of the principal is equivalent to a draft drawn by the principal on itself, and need not be accepted by the drawee in order to bind it. *First Nat. Bank of Artesia* v. *Home Ins. Co., New York* (1911), — N. Mex. —, 113 Pac. 815.

This case is at least one of the cases covering this point first to be carried up under the Neg. Ins. Law, and serves merely to show that that law has not